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Supreme Court, U.S.

OCTOBER TERM, 1946

NO. 12, ORIGINAL

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF ALABAMA,

Defendant.

BRIEF FOR THE STATE OF ALABAMA

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Supreme Court of the United States

OCTOBER TERM, 1940

NO. 12,—ORIGINAL

THE UNITED STATES OF AMERICA

Plaintiff,

vs.

THE STATE OF ALABAMA

Defendant,

BRIEF FOR THE STATE OF ALABAMA

JURISDICTION

This is an original action in this Court by the United States of America against the State of Alabama whereby the United States seeks to remove alleged clouds from the title of the United States to certain lands in Macon County, Alabama. The jurisdiction of this Court is invoked under section 233 of the Judicial Code of the United States, 28 U. S. C. section 341.

STATEMENT OF CASE

The statement of the case made in the Brief for the United States is not incorrect. Certain provisions of the revenue laws of Alabama which we believe are pertinent, however, have been omitted. Furthermore, the statement made fails to emphasize certain facts which we believe call for emphasis. For these reasons, we make our own statement of the case which is not in conflict with the statement made in the Brief for the United States, but in addition thereto.

Leave was granted the United States of America to file its Bill of Complaint in this cause on January 20, 1941. On March 3, 1941 the State of Alabama filed its Answer thereto. Included in the Answer was a Motion to Dismiss as authorized by Rule 12 (b) of the Rules of Civil Procedure for the District Courts of the United States.

From the Bill of Complaint and the Second Defense in the Answer along with other facts averred in the Brief for the United States and the facts averred in this Brief we take it that the facts are as hereinafter set out.

On October 1, 1936, the tract of land first described in Paragraph 1 of the complaint was owned in fee simple by C. C. Bridges and J. E. Bridges; the tract next described in said paragraph was owned in fee simple by Tom W. Willis; and the tract last described in said paragraph was owned in fee simple by R. M. Boyd.

On October 1, 1936, said C. C. Bridges and J. E. Bridges conveyed said first mentioned tract to the United States; on December 10, 1936, said Tom W. Willis and wife conveyed the second mentioned tract to the United States; and on March 10, 1939, said R. M. Boyd and wife conveyed the last mentioned tract to the United States.

Each of the conveyances of said tracts to the United States contained general covenants of warranty and, in effect, warranted said lands to be free from any tax lien. Said lands were at the time of the filing of this suit and still are in the possession of the United States.

Each tract of land was returned to the Tax Assessor of Macon County, Alabama, for purposes of ad valorem taxation by the respective owners thereof.[1] A value was placed on the respective tracts of land by the respective owners, which value was subsequently accepted by the said Tax Assessor, and approved by the Board of Review of Macon County, Alabama, as the assessed value of said tracts of land for purposes of ad valorem taxation. The assessed valuation of the respective tracts of land was the same for the tax year in question, which commenced October 1, 1936 and ended September 30, 1937, as for the preceding tax year which commenced October 1, 1935 and ended September 30, 1936.

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[1] Act No. 194, General Acts of Alabama 1935, pp. 256, 274, Sec. 30, 31, Appendix, pp. 41, 42.

After the returns were filed by the respective owners of the respective tracts of land, the assessed value of each of said tracts of land was entered upon said returns by the said Tax Assessor in the column designated thereon for such purpose as authorized by sections 29 and 50 of the Revenue Laws of Alabama of 1935, Act No. 194, General Acts of Alabama of 1935, pp. 256, 274.[2] Said assessments were thereafter reported to the Board of Review for said County which met on March 8, 1937, and adjourned on March 20, 1937, and which assessments were approved by said Board, and from which no appeal was taken. (See Appendix B, pp. 42, 43 in Brief for The United States.)

All ad valorem taxes in Alabama become due and payable on October 1, and delinquent on the 1st day of January of the next year,[3] hence the taxes on these assessments became due October 1, 1937 and delinquent January 1, 1938.

Said taxes not having been paid, upon report of such fact by the Tax Collector to the Probate Court[4] proceedings were instituted in said Court of Macon County, Alabama, for the sale of said lands for the payment of said unpaid taxes, costs and fees. (Sections 214 to 242, Act No. 194).

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[2] Appendix, pp. 40, 44, 45.

[3] Section 11 of said Act No. 194, Appendix, pp. 39, 40.

[4] Section 214 of said Act No. 194. Brief for the United States. Appendix A, page 28.

On May 16, 1938, a decree was entered against C. C. Bridges and J. E. Bridges for the sale of the first mentioned tract for unpaid taxes, $44.31, and costs, $10.66. On May 16, 1938, decree was entered against R. M. Boyd for the sale of the third mentioned tract for unpaid taxes, $105.84, and costs, $12.38. And on June 12, 1938, a decree was entered against Tom W. Willis for the sale of said second mentioned tract for unpaid taxes, $13.22, and $2.19 costs. On June 12, 1939, each of said tracts of land was sold pursuant to said decrees and at said sales was bid in for the State, the Bridges tract for $58.98, the Boyd tract for $118.84, and the Willis tract for $19.51, and pursuant to section 232, Act No. 194[5] a certificate of purchase was in each instance issued to the State by the Probate Court, which certificates are still held by the State.

All taxes levied on property in Alabama are required to be "assessed in exact proportion to the value of such property" * * (Article XI, section 211, Constitution of Alabama of 1901)[6]

All taxable property within the State is required to be "assessed for the purpose of taxation at sixty per cent of its fair and reasonable market value" as of October 1 of each current tax year.[7]

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[5] Brief for the United States, Appendix A, page 33.

[6] Appendix, page 38.

[7] Section 6 of said Act No. 194, Appendix, page 39.

Such value is required to be determined as of October 1, the first day of each current tax year;[8] and the individual owners are required to list and return for taxes for said year all property owned by them on October 1.

The rate of the levy for state purposes is limited by the Constitution to not more than "sixty-five one hundredths of one per centum on the value of the taxable property within this state", (Article XI, Section 214, Constitution of Alabama of 1901)[9] and such rate is fixed by Section 7 of said Act No. 194.[10] The levy for state purposes in accordance therewith is made by Section 8 of said Act No. 194.[11]

The maximum rates for county taxation are provided by Section 215 of the Constitution of Alabama of 1901,[12] and by Article XIX of the Constitution of Alabama of 1901, as amended,[13] and Section 64 of Act No. 194[14] and Section 213 of the Code of Alabama of 1923[14a] which required the Court of County Commissioners in the regular February Term in each year to levy such taxes to the extent necessary, subject to the constitutional maximum rates.

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[8] Sections 31 and 42 of said Act No. 194, Appendix, pp. 42, 43.

[9] Appendix, page 38.

[10] Appendix, page 39.

[11] Brief for the United States, Appendix A, page 24.

[12] Appendix, pp. 38, 39.

[13] Brief for the United States, Appendix A, page 40.

[14] Brief for the United States, Appendix A, page 25.

[14a] Appendix, pp. 45, 46.

The county tax for said year was levied on February 8, 1937, at the rate of seventy-five one hundredths of one per cent; and the school district tax for said year was submitted to and approved by the qualified electors of said school district at an election therefor held on June 14, 1937, which levy became effective for said current tax year.

Under the provisions of Section 248, Act No. 194,[15] it is provided that if the tax sale is for any cause ineffectual to pass title to the state (with certain exceptions not here applicable), the sale operates as an assignment of the liens to the state and authorizes such liens to be foreclosed in equity. See also Section 8874 of the Code of Alabama of 1901.[16] Said lands are subject to redemption from such tax sales by the former owner, mortgagee, purchaser, or by any person having an interest therein, which redemption may be made at any time before the title passes out of the state. (Section 268 and 269, Act No. 194.[17])

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[15] Appendix, page 45.

[16] Appendix, page 46.

[17] Brief for the United States, Appendix A, pp. 34, 35.

SUMMARY OF ARGUMENT

It is the contention of the state in this case that since the lands in question were subject to taxation on October 1, 1936, the lien of the state attached to the lands on that date and the United States purchased the lands subject to the lien. Conceding the invalidity of the tax sales nevertheless the state now has a lien for the amount of the taxes and this being a court of equity, the decree, if rendered by this Court (*cf. Railroad Commission of Texas v. Pullman Co.*—U. S.—,86 L. ed. (Adv. Sheets 1941) 580) should be moulded to do justice between the parties and give effect to the lien of the State of Alabama.

In support of these contentions, the State of Alabama maintains the following propositions of law:

1. The existence of tax liens to secure the payment of ad valorem taxes is to be determined by the law of the state where the tax and lien are imposed.

2. Lands in Alabama, acquired before the time when by completion of levy and assessment the amount of state taxes has been ascertained, are subject to the statutory lien for the taxes.

A. The lien to secure the payment of ad valorem taxes in Alabama attaches to lands subject to taxation on October 1 of each year regardless of the subsequent disposition of the lands.

B. The proper construction of the tax immunity of the United States does not prevent the state from completing the levy and assessment of ad valorem taxes for the current year in which the lands are acquired by the United States.

C. The statutory tax lien of the state, even though inchoate, at the time of the purchase or taking of the property by the United States, constituted a right protected under the Fifth Amendment to the Constitution of the United States.

3. The law recognizes no fraction of a day.

4. The invalidity of the tax sales in this case does not free the tracts of land from their share of the taxes.

ARGUMENT

1

THE EXISTENCE OF TAX LIENS TO SECURE THE PAYMENT OF AD VALOREM TAXES IS TO BE DETERMINED BY THE LAW OF THE STATE WHERE THE TAX AND LIEN ARE IMPOSED.

We were of opinion that this proposition was self-evident and would require no argument. Apparently, however, the argument advanced by the attorneys for the United States is premised on the assumption that decisions rendered by courts of other jurisdictions determine the existence of Alabama tax liens on lands in Alabama. The decisions of courts of other jurisdictions construing statutes

of other states are enlightening in determining how the Alabama courts shall or should have construed Alabama statutes. The ultimate decision, however, is determined by the Alabama statutes and the decisions construing the same concerning liens on lands in Alabama.

This proposition is expressed in the American Law Institute, Restatement, CONFLICT OF LAWS, section 230 as follows:

> "The creation and effect of a lien on land is determined by the law of the state where the land is."

See also 11 Am. Jur. 341, Conflict of Laws, Section 46.

This proposition was applied to tax liens in:

Hefner v. Northwestern Life Ins. Co., 123 U. S. 747 (1887)

Cf. *Hussman v. Durham*, 165 U. S. 144 (1897)
Paddell v. City of New York, 211 U. S. 446 (1908)

With reference to mortgages on real estate, the rights incident to the foreclosure thereof are determined by the law of the state where the land is situated.

Orvis v. Powell, 98 U. S. 176, 177 (1878)

The rights of redemption from foreclosure are determined by the laws of the same state.

Brine v. Ins. Co., 96 U. S. 627, 633, 634 (1878)

The existence of a vendors lien was premised on the law of the state where the land was.

Cordova v. Hood, 17 Wall. 1, 5 (1872)

Liens on personal property are also determined by the law of the state where such property is situated.

Thompson v. Fairbanks, 196 U. S. 516, 522 (1905)

Cf. Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638 (1900)

This same rule applies to boats.

The Winnebago, 205 U. S. 354, 360 (1907)

Martin v. West, 222 U. S. 191, 196 (1911)

In the Memorandum For the United States, filed in answer to the Brief and Argument In Opposition To Motion For Leave to File Complaint, the attorneys for the United States in effect argue that the questions for decision in this case cannot depend upon the varying statutes of the several states. This Court has repeatedly held, however, that not only is the status of liens determined by the law of the situs, but the construction of tax statutes is a matter peculiarly governed by the varying statutes, and decisions construing the same, of the states where the land is situated.

Thus, in the case of *Games v. Stiles*, 14 Pet. 322, 328 (1840) this Court said:

> "The laws in Ohio, imposing a tax on lands, and regulating its collection, like similar laws in, perhaps, almost all of the States, are peculiar in their provisions, having been framed under the influence of a local policy. And this policy has, to some extent, influenced the construction of those laws. There can be no class of laws more strictly local in their character, and which more directly concern real property, than these. They not only constitute a rule of property, but their construction by the courts of the State should be followed by the courts of the United States, with equal if not greater strictness than the construction of any other class of laws."

This idea was further set out in *Witherspoon v. Duncan*, 4 Wall. 210, 217 (1867) where the Court states:

> "It is not the province of this court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with the taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes."

In the case of *Lewis v. Monson*, 151 U. S. 545, 549 (1894) the Court said:

> "No question is more clearly a matter of local law than one arising under the tax laws. Tax proceedings are carried on by the State for the purpose of collecting its revenue, and the various steps which shall be taken in such proceedings, the force and effect to be given to any act of the taxing officers, the results to follow the non-payment of taxes, and the form and efficacy of the tax deed, are all subjects which the State has power to prescribe, and peculiarly and vitally affecting its well-being. The determination of any questions affecting them is a matter primarily belonging to the courts of the State, and the national tribunals universally follow their rulings except in cases where it is claimed that some right protected by the Federal Constitution has been invaded."

See also *Lane County v. Oregon*, 7 Wall. 71, 74 (1868).

In line with these statements, this Court has held itself bound by the statutes and decisions construing the same, of the several states in the following situations involving the assessing, collecting, and enforcing of taxes:

The date when the ad valorem tax becomes due:

Yazoo & M. V. R.R. Co. v. Adams,
181 U. S. 580, 583 (1901)

The interests subject to ad valorem taxes:

Carrol v. Safford, 3 How. 441, 460 (1845)
Central Pac. R. R. Co. v. Nevada, 162 U. S 512, 522, 523 (1896)
Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 381 (1904)
Waggoner Estate v. Wichita County, 273 U. S. 113, 117 (1927)

See: *Baker v. Druesedow*, 263 U. S. 137, 142, 143 (1923)

The procedure for assessing ad valorem taxes:

McGregor v. Hogan, 263 U. S. 234, 236 (1923)

See: *Bailey v. Magwire*, 22 Wall. 215, 231 (1874)

The medium of exchange for payment of the tax:

Lane County v. Oregon, 7 Wall. 71, 74 (1868)

The validity of a tax sale:
Raymond v. Longworth, 14 How. 76, 78, 79 (1852)
Castillo v. McConnico, 168 U. S. 674, 680, 682, 684 (1898)

See: *Turpin v. Lemon*, 187 U. S. 51, 57 (1902)

The construction of a tax deed:

Geekie v. Kirby Carpenter Co., 106 U. S. 379, 385 (1882)
Bardon v. Land & River Improvement Co., 157 U. S. 327, 331, 332, 333, 338 (1895)
French v. Taylor, 199 U. S. 274, 277 (1905)

See: *Gage v. Pumpelly*, 115 U. S. 454 (1885)

The remedy to recover taxes illegally paid:

First Nat. Bk. v. Weld County, 264 U. S. 450, 454 (1924)

The construction of statutes imposing public improvement assessments

Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112, 154, 155 (1896)
Schaefer v. Werling, 188 U. S. 516, 518 (1903)
Hibben v. Smith, 191 U. S. 310, 321 (1903)
Willoughby v. Chicago, 235 U. S. 45, 49, 50 (1914)
St. Louis Land Co. v. Kansas City, 241 U. S. 419, 427 (1916)
Farncomb v. Denver, 252 U. S. 7, 10 (1920)
Chicago M. & St. P. R. R. Co. v. Risty, 276 U. S. 567, 570 (1928)

The right to impose public improvement assessment liens:

Hancock v. City of Muskogee,
250 U. S. 454, 456 (1919)

The construction of statutes providing for the sale of lands to enforce public improvement liens:

Wood v. Brady, 150 U. S. 18, 23 (1893)

Cf. *Ballard v. Hunter*, 204 U. S. 241 (1907)

Statutes validating public improvement assessments:

Fidelity Nat. Bank v. Swope, 274 U. S. 123, 134, 135 (1927)

Inheritance taxes:

Carpenter v. Commonwealth,
17 How. 456, 462 (1854)
Keith v. Johnson, 271 U. S. 1, 8 (1926)

See: *Stebbins v. Riley*, 268 U. S. 137, 145, 146 (1925)

Tax on national banks:

People v. Weaver, 100 U. S. 539, 541, 542 (1879)
Palmer v. McMahon, 133 U. S. 660, 665 (1890)
First Nat. Bank v. Ayers, 160 U. S. 660, 664 (1896)
Aberdeen Nat. Bk. v. Chehalis County,
166 U. S. 440, 444 (1897)
Merchants Bk. v. Pennsylvania,
167 U. S. 461, 462 (1897)
Commercial Bank v. Chambers,
182 U. S. 556, 560 (1901)

Peoples' Nat. Bk. v. Marye,
191 U. S. 272, 276 (1903)
Clement Nat. Bk. v. Vermount,
231 U. S. 120, 134 (1913)
Des Moines Bank v. Fairweather,
263 U. S. 103, 105 (1923)

What is a franchise tax:
Pullman Co. v. Knott, 235 U. S. 23, 27
(1914)

The computation of a franchise tax:
Louisville & N. R. R. Co. v. Greene,
244 U. S. 522, 548 (1917)
New York v. Jersawit, 263 U. S. 493, 495
(1924)

The corporations subject to a franchise tax:
Erie R. R. Co. v. Pennsylvania,
21 Wall. 492, 497 (1874)
Michigan v. Mich. Trust Co.,
286 U. S. 334, 342 (1932)
Detroit International Bridge Co. v. Tax Bd., 287 U. S. 295, 297 (1932)
Privilege licenses:
Osborne v. Florida, 164 U. S. 650, 654
(1897)
Kehrer v. Stewart, 197 U. S. 60, 68 (1905)
Armour Packing Co. v. Lacy,
200 U. S. 226, 234 (1906)
Brown-Forman Co. v. Kentucky,
217 U. S. 563, 571, 572 (1910)
Douglas v. Noble, 261 U. S. 165, 168
(1923)

Coverdale v. Arkansas-La. Pipe Line Co.,
303 U. S. 604, 609 (1938)

Gasoline taxes:
Bingaman v. Golden Eagle Western Lines,
297 U. S. 626, 628 (1936)

The construction by the state courts of state statutes which constitute rules of property is binding on this Court.

Green v. Lessee of Neal, 6 Pet. 291, 299, 300 (1832)

Lowndes v. Huntington, 153 U. S. 1, 19 (1894)

See: *Edward Hines Trustee v. Martin*, 268 U. S. 458, 462, 463 (1925)

In fact, the construction of state statutes generally by state courts is binding on this Court.

Sioux County v. National Surety Co.,
276 U. S. 238, 240 (1928)

In the Brief filed by the United States on page 2 thereof, it is stated that one of the questions presented is whether lands in Alabama are subject to a lien to secure the payment of ad valorem taxes when such lands are purchased by the federal government "* * after the date upon which property is made subject to such lien by state statute * * *". This question is to be answered by the legislation found in Alabama as construed by Alabama Courts. The question for decision, therefore, narrows down to the statutes and decisions of Alabama.

LANDS IN ALABAMA ACQUIRED BEFORE THE TIME WHEN BY COMPLETION OF LEVY AND ASSESSMENT THE AMOUNT OF STATE TAXES HAS BEEN ASCERTAINED ARE SUBJECT TO THE STATUTORY LIEN FOR THE TAXES.

A. The Lien To Secure The Payment Of Ad Valorem Taxes In Alabama Attaches To Lands Subject To Taxation On October 1 Of Each Year Regardless Of The Susbequent Disposition Of The Lands.

The general rule with reference to the date when a lien attaches to lands to secure the payment of ad valorem taxes is stated in 3 Cooley, TAXATION (4th Ed. 1924) p. 2454, Sec. 1232, as follows:

> The time when the lien will attach to land must be determined by the terms of the statute. Sometimes the statute names a day as that from and after which the tax shall be a lien; and when that is done, it may determine, as between subsequent purchasers and encumbrancers, the liability for the tax."

In Alabama this time when the lien attaches is definitely fixed by Section 372 of the Revenue Laws of Alabama of 1935.[18] Section 8874 of the Code of Alabama of 1923 (Appendix page 46) expressly provides that the lien attaching on October 1 is "* * * for the payment of any and all taxes which may be assessed against the owner, or upon such property, *during that year*, * * *". Italics supplied).

A detailed discussion of the various statutes giving the state a lien is not considered necessary. It it to be observed, however, that in each instance, the legislature has recited that the lien attaches at the commencement of the tax year. The legislature has

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[18] Brief for the United States, Appendix A, page 38.
The predecessors of this Section creating a lien for taxes are as follows:
Toulmin, Digest of the State of Alabama (1823) p. 744, Section 12
Aikin, Alabama Digest (1833) p. 415, Taxation, Section 37
Clay's Digest (1843) p. 566, Taxes, Section 52
Code of Alabama of 1852, Section 487
Code of Alabama of 1867, Section 562
Code of Alabama of 1876, Section 375
Code of Alabama of 1886, Section 459
Code of Alabama of 1896, Section 3921
Code of Alabama of 1907, Section 2093
Code of Alabama of 1923, Section 8874

The Revenue Act of 1919, provided a lien to secure the payment of ad valorem taxes by Section 416 thereof, Act No. 328, General Acts of Alabama 1919, pp. 282, 449. By Section 12 of the Code of Alabama of 1923 the revenue laws were omitted therefrom. The revenue laws were compiled in pamphlet form in 1923 and Section 416 of the Revenue Act of 1919 was brought forward into the pamphlet as Section 346 of the Revenue Laws of Alabama of 1923. The revenue laws of Alabama were again compiled in 1929 and the lien section was brought forward as Section 381 of the Revenue Laws of Alabama of 1929. This was brought forward as Section 372 of the Revenue Act of 1935, the one presently in effect.

Section 8874 of the Code of Alabama of 1923, Appendix page 46, remains in effect and is to be considered in deciding whether the State has a lien to secure the payment of taxes.

never considered the ascertainment of the amount of the tax as a prerequisite to the existence of the statutory lien. The enforcement of the lien might be postponed awaiting the ultimate ascertainment of the amount of the tax due. However, this would not indicate that the legislature did not intend for the state to have a lien, a definite charge on the property, attach as of the beginning of the tax year.

The objection has been raised that the amount of the tax was not definitely ascertained at the beginning of the tax year, and therefore, there was no lien at that time which the State of Alabama had. Since the property was then purchased by the federal government, no further action could be taken by the state toward creating a lien on the lands involved. The fallacy of this argument arises from the assumption that the State of Alabama has nothing at the beginning of the tax year.[19]

In the nature of things, there is no objection to the creation of a statutory lien to secure the payment of taxes, the amount of which is not ascertained. There are many cases so holding. For a few such cases, see:

Osterberg v. Union Trust Co., 93 U. S. 424 (1876)

In re Knox-Powell-Stockton Co., 100 F. (2d) 979, 983 (C. C. A. 9th 1939)

Bates v. Archer, 288 F. 182, 183, 184 (C. C. A. 6th 1923)

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[19]Even *In re Opinion of the Justices*, 234 Ala. 358 (1937) relied on in opposition to the state's position in this case, the lien is called "inchoate".

San Diego County v. Riverside County,
125 Cal. 495, 500 (1899)
City of Santa Monica v. Los Angeles County,
15 Cal. App. 710, 712 (1911)

See: *Escondido v. Escondido Lbr. Co.*,
8 Cal. App. 435, 439 (1908)
State v. Northwestern Tele. Exch. Co.,
80 Minn. 17, 21 (1900)
Wood v. McCook Water Works Co.,
97 Neb. 215, 219 (1914)

In the State of Alabama statutory liens have been recognized and enforced on property belonging to tax officials and the sureties on their bonds in cases of defalcation by the official though the amount of the defalcation was unknown at the time of the conveyance of the property sought to be charged, and even at the time the action was brought to enforce the lien.

County of Dallas v. Timberlake,
54 Ala. 403, 412 (1875)
Knighton v. Curry, 62 Ala. 404, 407 (1878)
Turner v. Teague, 73 Ala. 554, 556 (1883)
Lott v. Mobile County, 79 Ala. 69, 74, 75 (1885)
Schuessler v. Dudley, 80 Ala. 547, 549 (1886)
Baker v. Schuessler, 85 Ala. 541, 543 (1888)

Cf. *First Nat. Bk. v. American Surety Co.*,
237 Ala. 35, 37, 38 (1938)

See: *Colt v. Barnes*, 64 Ala. 108, 122 (1879) concerning the statutory lien of the state with reference to railroad bonds endorsed by the state.

The statutory landlord's lien is another instance where a lien is recognized though the amount secured thereby is not definite and fixed.

See: *Scott v. Renfro*, 106 Ala. 611, 614 (1894)
***Arbuthnot v. Thatcher*, 237 Ala. 593, 595, 596 (1939)[20]**

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[20]Valid statutory liens are created to secure the payment of debts or liabilities in advance of the accrual thereof, and to secure the performance of specified duties or obligations in advance of any default or breach thereof, including security for taxes not yet due or accrued. Examples of such statutory liens may be found in the following:

(a) Landlord's liens (Code of Alabama of 1923 Sections 8799 and 8814)
(b) Liens for use and occupation of lands (*op. cit.* Section 8820 (4))
(c) Mechanics and materialmen's liens (*op. cit.* Sections 8832 and 8833)
(d) Blacksmith and woodworkmen's liens (*op. cit.* Section 8863)
(e) Liens of jeweler's and watch makers (*op. cit.* Section 8868)
(f) Liens on ships, steamboats and other water craft (*op. cit.* Section 8879)
(g) Liens of railway laborers and employees (*op. cit.* Section 8878)
(h) Liens of livery stable keepers (*op. cit.* Section 8890)
(i) Agisters' pasturage or trainers' liens (*op. cit.* Section 8892)
(j) Liens upon certain livestock (*op. cit.* Section 8897)
(k) Liens of sawmill laborers (*op. cit.* Section 8901)
(l) Stumpage liens (*op. cit.* Section 8906)
(m) Liens on owners of booms and bulkhead (*op. cit.* Section 8910)
(n) Public ginners' liens (*op. cit.* Section 8914)
(o) Liens of sawmill owners or operators (*op. cit.* Section 8919)
(p) Liens of owners of peanut machines or pickers (*op. cit.* Section 8924)

This Court has sustained the lien of a state for taxes even though the amount of the tax was not finally fixed. In the case of *Osterberg v. Union Trust Co.*, 93 U. S. 424 (1876) it appears that a railroad was purchased on August 16, 1875. The purchaser went into possession on December 9, 1875. In Illinois taxes were made a lien on May 1 of each year, but the equalization board did not meet to finally fix the values on property for taxation until the second Tuesday in August. The tax books were delivered to the tax collector during the first ten days in December. This Court held the purchaser bought the property subject to the taxes for 1875.

It would appear that this Court has recognized the validity of a statutory lien to secure the payment of taxes to the federal government even though the amount of the tax was not definitely and finally fixed when the lien attached.

Hartman v. Bean, 99 U. S. 393, 397, 398 (1878)[21]

(q) Liens of hotel, inn, boarding house or restaurant keepers (*op. cit.* Section 8933)

(r) State liens upon property of certain public officers to secure faithful performance of official duties (*op. cit.* Section 2603)

In the Federal system of taxation, there are provisions creating statutory liens, viz: General statutory lien provisions (c. 852 Sec. 613, 45 Stat. 875)

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[21]This Court has also recognized the validity of state statutes fixing an arbitrary date upon which the status of the property is determined for ad valorem tax purposes and has given effect to such statutes.

People v. Commissioners, 104 U. S. 466, 468 (1881)

Shotwell v. Moore, 129 U. S. 590, 598 (1889)

Thus, it is not essential to the validity of a statutory lien attaching as of a fixed date that the amount secured thereby be known. Though the attorneys for the United States argue (Brief for the United States p. 10) that in the nature of things such a lien cannot be had, we take it, on the authorities above cited, this cannot be true. No constitutional provisions have been cited to prevent the creation of such a lien. Hence, we take it that the question in this case resolves itself into a determination of whether the legislature of the State of Alabama has imposed a lien as of October 1, on the lands involved in this case, even though the amount secured thereby is not finally fixed on that date.

On October 1, 1936, the effective date of the statutory lien for ad valorem taxes for the current tax year commencing on that date and ending September 30, 1937, the property involved and the then owners thereof were subject to the tax, and

(a) the state levy had been made; (Act No. 194, General Acts of Alabama 1935, p. 256, Section 8)

(b) the levy on behalf of the county had been authorized for general and specified purposes, and the maximum rates fixed; (*op cit.* Section 64, and Section 213, Code of Alabama, as amended)

(c) the duty of the taxpayer to return and list the property for taxation and the duties of the Tax Assessor in that regard commenced on October 1, the date of the lien, though additional time was provid-

ed within which to complete the work of making such returns; (*op cit.* Sections 29 and 30)

(d) the basis for the assessment had then been fixed by law, namely, sixty per cent (60%) of the fair and reasonable market value thereof as of October 1, 1936; (*op. cit.* Section 6)

(e) the statute provided the assessed value "as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; * * *"; (*op. cit.* Section 47 Appendix p. 43, 44).

(f) the law under which the district school tax was imposed for such current year had been adopted, fixing therein the maximum rate of the levy, but such levy was subject to approval by vote of the majority of the qualified electors residing within such district. (Section 2 of Article XIX of the Constitution of Alabama, as amended)

The cases construing the Alabama statutes, referred to in a previous Brief, are hereinafter set out.

The Supreme Court of Alabama held in the case of *Driggers v. Cassady*, 71 Ala. 529, 534 (1882):

"The alienation of the land by the owner, Hargrove, although made prior to the date of sale, could not affect the lien of the State for delinquent taxes. The sale to Oates, made in October, 1878, *was after this lien had accrued*, which, in point of time, is fixed by statute to be the first of January of the year for which the taxes were assessed.—Code, section 375."

Accord: *Kuhl v. Long*, 102 Ala. 562 (1893)

The doctrine in this case was affirmed with reference to personal property in the case of *Rodgers v. Gaines*, 73 Ala. 218 (1882).

The status of the property for purposes of taxation is determined as of the beginning of the tax year.

Swann & Billups v. State, 77 Ala. 545 (1884)

Cf. State Tax Comm. v. Com. Realty Co., 236 Ala. 358, 361 (1938)

The taxability of the individual for the ownership of property is also determined as of the beginning of the tax year.

Bains Bros. Inv. Co. v. Walthall, 180 Ala. 45 (1912)

Bains Bros. Inv. Co. v. Purdie, 180 Ala. 333 (1912)

Southern Inv. Co. v. Galloway, 206 Ala. 445, 446 (1921)

Cf. Henderson v. Simmons, 234 Ala. 329, 331 (1937)

In the case of *State v. Alabama Educational Foundation*, 231 Ala. 11 (1935) the court held that a statute enacted September 9, 1927, could not grant an exemption of ad valorem taxes to the taxpayer for the tax year commencing October 1, 1926, and ending September 30, 1927. See also *Union Bank & Trust Co. v. Phelps*, 228 Ala. 236 (1934) in this connection.

Based on these cases and the language of the court therein, the Attorney General of Alabama has consistently ruled that the lien of the state to secure ad valorem taxes arises at the beginning of the tax year, even though the exact amount of the tax may not at that time be known and even though the property is acquired by a government during the year. See Biennial Report Attorney General of Alabama 1928-30, page 543. Biennial Report of Attorney General of Alabama 1936-38, page 724. The legislature of Alabama has met since these opinions were rendered and no effort has been made to alter the statutes of Alabama to indicate a different legislative intent from that set forth in these opinions.

The attorneys for the United States rely upon the language found in *In Re Opinion of the Justices*, 234 Ala. 358 (1937) as overturning this consistent rule which has been administered and applied by the taxing officials of the State of Alabama. We do not believe this language of the court warrants such a conclusion. In that case, the court was called upon to decide whether the legislature might exempt homesteads from state ad valorem taxation for the tax year commencing October 1, 1936 and ending Sep-

tember 30, 1937 by an act of the legislature approved February 20, 1937. At the time this act was approved, other provisions were enacted to take care of the revenue lost to the state by reason of the exemption. The court held that the subjects of taxation were matters of legislative discretion and this discretion could be exercised at any time before the taxes become due. The court held that Section 100 of Article IV of the Constitution of Alabama of 1901 prohibiting the release of obligations or liabilities did not apply to prohibit the legislature from ascertaining the subjects of taxation during the tax year. In the course of the Opinion on page 364, the court stated:

> "After October 1st, the Legislature cannot relieve one, by classification of taxpayers, or otherwise, from the payment of ad valorem taxes for that year on property owned by him October 1st, to the extent that the Legislature subjects such property to such taxes for that year, whether the act of the Legislature either in subjecting it or exempting it occurred before or after October 1st.
>
> "Section 100 of the Constitution was not intended to control the power of the Legislature in selecting or the exempting of property of certain classes from taxation. But as to such property as is and remains taxable by act of the Legislature, its owner on October 1st is and remains liable for the payment of the tax, and he or the class of taxpayer to which he

belongs cannot be relieved of its payment by act of the Legislature effective after October 1st."

In the Brief filed on behalf of the United States (pp. 14-15), the decision of Mr. Justice Cardozo in the case of *New York v. Maclay*, 288 U. S. 209, (1933), is relied upon as an authority under which the Court may cancel the assessment and lien imposed by the State against the individual grantors for the tax year in which the United States purchased the lands involved. That case may be clearly distinguished. It did not involve a claim by the United States for tax immunity, but the assertion by the United States of a right of preference against assets of an insolvent, a preference expressly granted under Section 3466 of Revised Statutes (31 U. S. C. Section 191). In that case, even though the tax was not an ad valorem tax, and the lien of the state was inchoate, it was held to be such a lien as would be good against subsequent purchasers, that is, against one purchasing subsequent to the statutory lien date. It is assumed that such rule against subsequent purchasers would be held binding even against the United States, if in such case the United States had been a "subsequent purchaser", and had attempted to interpose a claim of tax immunity instead of asserting a right of preference under Section 3466.

The citation of authorities arising under such statute (Section 3466, Revised Statutes) do not appear to have an application to the assertion of a claim for tax immunity, for the reason that the doc-

trine of tax immunity has been construed and applied prospectively with full recognition of existing liens, whereas the claim of preference under Section 3466, Revised Statutes, is expressly provided to operate in effect retrospectively against conflicting claims or liens.

Since this question is a question of Alabama law and since the administrative officials have consistently construed the tax laws of Alabama in accordance with the position taken by the State in this case, we do not believe this Court should substitute its judgment for the considered practice followed in Alabama. *Cf. Hawks v. Hamill*, 288 U. S. 52 (1933).

As noted in the previous brief, this State has collected a large amount of taxes from property owners in the State of Alabama whose property was conveyed to the federal government after October 1, but before the amount of the tax had become finally fixed. If a property owner in Alabama owns property other than that conveyed to the federal government, the state has collected the tax by reason of the fact that the lien which it has on the remaining property secures the payment of the tax on the property sold to the government. The property owners in the State of Alabama have accepted this construction and have paid their taxes in reliance thereon. We believe that the federal government as a landowner in the State of Alabama should be subject to the same laws as other property owners.[22]

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[22] *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283 (1925).

B. The Proper Construction Of The Tax Immunity Of The United States Does Not Prevent The State From Completing The Levy And Assessment Of Ad Valorem Taxes For The Current Year In Which The Lands Are Acquired By The United States.

The tax immunity of the United States with respect to property owned by it is expressly recognized by the State of Alabama and is given effect by the provisions of Section 2 of the Revenue Laws of Alabama of 1935 (Act No. 194, General Acts of Alabama 1935, pp. 256, 257); wherein "all property, real and personal owned by the United States" is exempted from ad valorem taxation.

The decisive question revolves around the manner of giving proper effect to the tax immunity of the United States, without disrupting the recognized right of the state to enact and enforce a system of taxation for the collection of annual ad valorem taxes upon property and persons subject to the jurisdiction of the state.[23] The question is not one which merely involves a technical construction of the time when the state tax lien becomes such a fixed or final obligation or liability as it may not be released by the legislature without violating the provisions of Section 100 of the Constitution of Alabama of 1901, as was the subject of discussion in *In Re Opinion of the Justices*, 234 Ala. 358 (1937).

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[23] "The power of taxation has always been regarded as a necessary and indispensable incident of sovereignty. A government that cannot, by self administered methods, collect from its subjects the means necessary to support and maintain itself in the execution of its functions is a government merely in name." Per Shiras, J., *United States v. Snyder*, 149 U. S. 210 214 (1893).

The right of the United States to tax immunity, like a legislative act granting tax exemptions, unless otherwise expressly provided therein, should not be given any retroactive effect, but should be construed prospectively, beginning with the next succeeding annual tax period in the case of annual ad valorem taxes. This accords every consideration to the power of taxation reserved to the States, and avoids an undue burden upon or embarrassment of either the United States or the State.

Such construction is not in conflict with any provisions of the Federal Constitution or the laws of Congress enacted pursuant thereto. Such application of the privilege or right of tax immunity is a rule which justly and fairly works both ways and under the laws of the State of Alabama, if the United States owned the land on October 1 of any tax year, the exemption from tax is accorded for the full period of the current tax year even though the United States, at any time during the current tax year, sells and conveys the property to a private owner.[24] The general rule is to fix an annual date as of which the taxable status shall be determined regardless of changing conditions or ownership, and such rule has been held to "constitute the best regulation the law can establish". 3 *Cooley, Taxation* (4th Ed. 1924) p. 2141, Sec. 1062.

To protect the rights of the state and at the same time accord tax immunity to the United States

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[24] *Swann & Billups v. State*, 77 Ala. 545 (1884)
Cf. New Brunswick v. United States, 276 U. S. 547, 554 (1928)

effective for the next succeeding tax year as provided by the Alabama statute avoids conflict with any constitutional provisions. It gives full recognition to the taxing power of the state against the individual owner as well as to the privilege of tax immunity thereafter entitled to be enjoyed by the National Government, and seems to constitute the only constitutional, just and fair solution to the problem.

It is our understanding that the attorneys for the United States passing on the title of lands in Alabama acquired by the United States require evidence that the taxes for the preceding years have been paid. If, for any reason, this is not satisfactory, an amount sufficient to take care of these taxes is withheld or placed in escrow and not paid to the vendor until the matter is cleared up. It has never been suggested that these requirements were in derogation of the immunity granted the United States from state taxation.

For the United States to follow this same procedure for the current tax year would impose no burden on the United States inconsistent with its sovereignty. The cost of the land to the government would not increase. The United States would then require the vendor of the land to produce a receipt for the taxes for the current year as well as for the past years.

C. The Statutory Tax Lien Of The State, Even Though Inchoate, At The Time Of The Purchase Or Taking Of The Property By The United States, Constituted A Right Protected Under The Fifth Amendment To The Constitution Of The United States.

Under the decisions of Alabama, it has been held uniformly that the tax lien constituted a charge or encumbrance upon the property beginning October 1 of the current tax year. We, therefore, submit that the state's tax lien constituted such an encumbrance upon or interest in property as prohibited the taking thereof by the United States "for public use, without just compensation". The words "private property" appearing in Fifth Amendment to the Constitution are given a broad construction, and have been held to include property of subdivisions of a state, even though such property is ordinarily referred to as public property.

Wayne County v. U. S., 53 Ct. Cl. 417, 423, 424 (1918) affirmed 252 U. S. 574 (1920)

Bedford v. U. S.
23 F. (2d) 453, 455 (C. C. A. 1st, 1927)

U. S. v. Wheeler Township,
66 F. (2d) 977, 980 (C. C. A. 8th, 1933)

Cf. Stockton v. B. & N. Y. Ry. Co.
32 F. 9 (Cir. Ct. D. N. J. 1887)

Certainly, it would seem that the assertion of any right based upon or arising by reason of tax immunity should be subordinated to or conditioned upon the payment of "just compensation" to the state, the holder of such lien, and that the state, as such lienholder, is entitled to the protection of the Fifth Amendment to the Constitution in any decree which may be entered in this cause.

3.

THE LAW RECOGNIZES NO FRACTION OF A DAY

The tract of land belonging to C. C. and J. E. Bridges was conveyed to the United States on October 1, 1936. Assuming that the State of Alabama has a lien on October 1, 1936, for the payment of taxes, the lien attaches on that day and not on October 2. This was so decided in the case of *Hill v. Bacon*, 110 Mass. 387, 388 (1872). See also the following cases enunciating the same rule:

Arnold v. U. S., 9 Cranch. (U. S.) 104, 119, 120 (1815).
Wood v. Fort, 42 Ala. 641, 642 (1868).
Turnipseed v. Jones, 101 Ala. 593, 595, 596 (1893).
Beck v. Johnson, 235 Ala. 324 (1938).

4.

THE INVALIDITY OF THE TAX SALES IN THIS CASE DOES NOT FREE THE TRACTS OF LAND FROM THEIR SHARE OF THE TAXES

Even if the proceedings for the sale of the lands are held to be irregular or void, the lands were taxable for such tax year and were taxed against the individual owners and the lien therefor is valid and is enforceable in equity under Section 248 of Act No. 194 (Appendix p. 45) which provides:

"When the sale of any land sold for the payment of taxes is, for any cause, ineffectual to pass the title to the purchaser, whether individual or the State, except in the case in which such sales are in this chapter expressly declared to be invalid, such sale shall operate as an assignment to the purchaser of the rights and liens of the State and county in and to the lands sold, both as to the taxes paid at said sale, and as to the taxes subsequently paid by the purchaser. And such liens may be foreclosed in equity in the same manner as other liens as provided in this Act."

See also Section 8874 of the Code of Alabama of 1923. (Appendix p. 10). Also *Sheffield City Co. v. Tradesmans Nat. Bank*, 131 Ala. 185, 190 (1901).

In Alabama there is a general provision relating to the enforcement of liens, Section 8935 of the Code of Alabama of 1923, (Appendix pp. 46, 47) which has been applied to the enforcement of tax liens. *Wise v. State*, 208 Ala. 58, 61 (1922).

Such right or lien, we submit, may properly be enforced by this Court as a condition for the cancellation of the foreclosure proceedings; or, this Court may refuse to quiet the title of the United States against the interest claimed by the state, except upon condition that the amount legally due the state be paid in extinguishment of the lien or require the United States to effect a redemption of the property from the tax sale.

There is ample authority to support such a course, following the general equity rule that where a Court in Equity has jurisdiction of the parties, it will decide all matters in dispute and decree complete relief.

See:

United States v. Union Pacific R. R. Co., 160 U. S. 1, 50, 51, 52 (1895).

Cf. United States v. Thekla, 266 U. S. 328, 340 (1924).

CONCLUSION

Since by the statutes of Alabama as construed by its courts and officials, the applicable law in this case, the state had valid liens on the tracts of land involved in this case to secure the payment of ad valorem taxes on October 1, 1936, the United States acquired such lands burdened with such valid liens, and the relief sought in this case should be denied.

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APPENDIX

CONSTITUTION OF ALABAMA OF 1901

The Constitution of Alabama of 1901, Article XI, provides:

"Section 211. All taxes levied on property in this state shall be assessed in exact proportion to the value of such property, but no tax shall be assessed upon any debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value."

"Sec. 214. The legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this state."

"Sec. 215. No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges, or roads, (a) any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have

been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

REVENUE LAWS OF ALABAMA OF 1935

Act No. 194, General Acts of Alabama, 1935, p. 256, provides:

Page 263:

"Section 6. All taxable property within this State shall be assessed for the purpose of taxation at sixty per cent of its fair and reasonable market value."

Page 263:

"Section 7. The rate of taxation for State purposes shall be sixty-five one-hundredths (.65) of one per cent (1%) per annum on the assessed value of the taxable property within this State."

Page 267:

"Section 11. All taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become deliquent if not paid before the first day of January succeeding, except in cases when parties have moved or are about to move from the county, and except in cases when parties are closing out or going out of business, and except in cases where insolvency is impending, and except in cases where goods, wares and merchandise are advertised for sale at auction, bankrupt, insolvent, assignment or fire sales, or where said goods, wares and merchandise are advertised for sale for the satisfaction of creditors,

or as closing out or going out of business sale, or in any way where a person is disposing of substantially all of his taxable property in the county, in which cases such taxes shall become due and payable at once. Advertisements in the newspapers or otherwise, of a sale of any personal property as a closing out sale, fire sale, bankrupt sale, or any sale of like character shall be prima facie evidence that the collection of taxes due on such property or any other property so advertised is endangered within the meaning of this Section. Notice to any Tax Collector by the State Tax Commission, a Tax Assessor, Deputy Tax Assessor, Tax Agent, License Inspector or any other official of this State or any county thereof, that any person is about to move a whole or any part of his personal property from this State, shall be prima facie evidence that the collection of the taxes due or to become due by said person on such property or other property is endangered and upon failure of the Tax Collector to act as provided in Section 186 of this Act, he shall be liable on his bond for any neglect to immediately collect the taxes due, by levy and sale or otherwise."

Page 274:

"Section 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the Assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the Comptroller and Collector and State Tax Commission."

Pages 274, 275:

"Section 30. Between the first day of October and the first day of January of each year, the Tax Assessor shall in all counties having a population of one hundred thousand or less, visit each voting place in each precinct for the purpose of listing property for taxation, and he shall remain there one day in all county precincts and towns of less than one thousand inhabitants, from eight o'clock A. M. until four o'clock P. M. In towns other than county seats, of five thousand inhabitants or more, he shall remain at each place of appointment for one week, either by himself or deputy. In places of one thousand inhabitants and not over five thousand, he shall remain at the place of appointment for three days, either by himself or deputy. The Assessor shall give at least ten days notice by advertisement in a newspaper, if there be one published in the county, and by bill posted at five or more public places in each election precinct, of the time when he will attend to receive the tax returns. Upon the failure of the Tax Assessor to give the notice required by this Section, or to attend any appointment made by him in any precinct, he shall after legal notice, fill new appointments, or forfeit all claims to fees from such persons in such precinct as were disappointed by his non-attendance. He shall keep the office open at the court house all the year round. Provided, that the Court of County Commissioners or court of like jurisdiction, may by order duly entered on its minutes as other orders and decrees of the court are entered, relieve the Tax Assessor from making visits to each voting place in each precinct as above provided, when in the opinion of the court it is deemed advisable."

Page 275:

"Section 31. It is the duty of every person in every election precinct to attend in person before the Assessor on the first day of the appointment in the precinct of the taxpayer's residence, and then and there render to the Assessor under oath a full and complete list of all property of which he was owner, or in which he had any interest whatever, or of which he was trustees or agent on the first day of October of that year, and to enter upon such paper the amount of fire insurance carried upon any of the property so listed. The land and improvements thereon must be separately listed. On failure of the taxpayer for thirty days after demand or notice by the tax assessor, to furnish a sufficient description of his real estate, said tax assessor shall secure such description from the records of conveyance in the office of the probate court of his county, and if he is unable to get a sufficient description from such records, then by a survey of property by the county surveyor or otherwise, and the reasonable expenses incident thereto shall be allowed by the commissioners court or board of revenue, and paid out of the general fund of the county wherein the property involved is located, and such amount as is allowed shall be added as costs to the taxes assessed against such taxpayer, and when collected shall be covered into the general found of the county."

Pages 279, 280:

"Section 42. Every person of full age and sound mind and every firm or body corporate or politic, and every trustee and receiver shall, when legally called on by the Assessor, forthwith make a full, true and distinct statement of all real and personal property, with a correct description thereof of land and improvements, separately of which he

is the owner or holder, individually, or as guardian, parent, husband, wife, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, and including all monies hoarded, held or owned on the first day of October of the current tax year, or any time preceding or succeeding the first day of October of the current year."

Pages 281, 282:

"Section 47. The Assessor shall, from information entered on the tax return list and from all other information known to him, or which he may procure, proceed to ascertain what, in his best judgment, is a fair and reasonable market value of each item of property returned by or listed to any taxpayer; provided, however, that the assessed value of any real estate or improvements as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; and the Assessor shall in separate columns, enter on such list such amount and value, and deduction for exemption to which such taxpayer is entitled; and the Tax Assessor shall also add to such list any item of property subject to taxation, owned by such taxpayer, or in which he has any interest whatever and which he had failed or omitted to place on such list; and the taxpayer shall be given notice by the Assessor, by registered mail, return receipt, demanded, or in person, of the items of property added to his assessment list after such list has been filed and before the Tax Assessor has completed his assessment; and the Assessor shall upon demand, furnish the tax-

payer with a certified copy of his assessment list so amended. In the event the value of real or personal property of any taxpayer is increased by the Board of Review, herein created, over the assessed value thereof, for the next preceding year, the taxpayer shall be furnished by registered mail, return receipt demanded, or in person, by the Secretary of the Board of Review, with a statement showing separately the value of his personal property, and his real property, and improvements thereon, such statement to be signed by the Chairman of the Board of Review, and also that such taxpayer may file in writing, with the Secretary of the Board of Review, on or before the last Monday in April, objections to any assessed valuation fixed as herein provided. But failure to give or receive the notices required in this Section shall not invalidate such assessment. Provided, however, that the taxpayer shall have the right any time before the taxes become due to appear before the Board of Review and have the assessment of his property reopened, if satisfactory proof is made that the taxpayer or his agent did not receive notice of such increase. The expense of postage incurred in carrying out the provisions of this Section shall be paid in equal proportions by the County and State, upon a certified statement thereof by the Secretary of the Board of Review, filed with the Court of County Commissioners, or the board or court of like jurisdiction and with the State Comptroller. The Tax Assessor shall be allowed twenty-five cents for each notice served as provided in this act, where the assessed valuation of any taxpayer's property is increased over the valuation as fixed for the preceding year, the same to be charged and collected as fees collected for delinquent assessments."

Page 284:

"Section 50. When the assessor shall have completed his work of assessing, valuing and equal-

izing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessments lists, which shall not be later than the last Monday in February of each year, he shall certify over his signature to the correctness of the returns, showing valuations fixed by him, and he shall at once notify the State Tax Commission by registered mail, that he has completed his assessment, valuation and equalization work and that the tax returns are ready for the review and inspection as provided for in this Act. Such lists of property shall be by the assessor delivered to the Board of Review not later than the second Monday in March."

Page 362:

"Section 248. When the sale of any land sold for the payment of taxes is, for any cause, ineffectual to pass the title to the purchaser, whether individual or the State, except in the case in which such sales are in this chapter expressly declared to be invalid, such sale shall operate as an assignment to the purchaser of the rights and liens of the State and county in and to the lands sold, both as to the taxes paid at said sale, and as to the taxes subsequently paid by the purchaser. And such liens may be foreclosed in equity in the same manner as other liens as provided in this Act."

CODE OF ALABAMA OF 1923

Section 213 as amended by an Act approved April 21, 1936, General Acts of Alabama, Extra Session, 1936, p. 217, provides:

"Section 213. SPECIAL TAX FOR COUNTY BUILDINGS, BRIDGES AND ROADS. The Court of County Commissioners or other governing body of like jurisdiction in any county in this state, may

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

NO. 12 -- ORIGINAL

THE UNITED STATES OF AMERICA

Plaintiff

vs.

THE STATE OF ALABAMA

Defendant

ADDENDA TO THE BRIEF FOR THE STATE OF ALABAMA

In the second line of the last paragraph on page 6, change the words "Section 215" to read "Sections 215 and 269".

Change the first paragraph on page 7 to read as follows:

"The county taxes for said year of fifty cents for general purposes, and of twenty-five cents for special road and bridge purposes were levied by the Board of Revenue of Macon County on February 8, 1937; the special county school tax under Section 269 of the Constitution of Alabama was approved at an election held on June 14, 1937, and was levied by the Board on June 15, 1937, effective for the current tax year; the special county school tax of thirty cents, under Section 1 of Article XIX of the Constitution, was approved by an election held on July 16, 1928, and was levied by the Board on July 21, 1928, for the period of ten years from September 30, 1928; and the special district school tax of thirty cents, under Section 2 of Article XIX of the Constitution, for School District No. 1, was approved at an election held on May 15, 1929, and was levied by the Board on May 18, 1929, for the tax years of 1929 to 1938, both inclusive, all of which levies were based upon each one hundred dollars worth of taxable property."

On page 25, change subparagraph (b) to read as follows:

"(b) All county and special district taxes had been levied, except the levy for general county purposes of fifty cents on each one hundred dollars worth of taxable property, and for special county road and bridge purposes of twenty-five cents on each one hundred dollars worth of taxable property, and for special county school purposes

of ten cents on each one hundred dollars worth of taxable property, thereafter levied pursuant to law within the maximum rates fixed by the Constitution. (Sections 215 and 269 and Article XIX of the Constitution of Alabama, as amended, Section 216 of the Code of Alabama of 1923, as amended, and Section 64 of Act No. 194)."

On page 26, strike out subparagraph (f).

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levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum, for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary bridges or public buildings, or incurred for the erection of public roads since the 28th day of November, 1901, or that may hereafter be created for the erection, repairing, furnishing or maintenance of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

Chapter 314, Article 6, provides:

"8874. LIEN OF STATE AND COUNTY FOR TAXES. From and after the first day of October of each year, the state shall have a prior lien upon each and every piece or parcel or property, real or personal, for the payment of any and all taxes which may be assessed against the owner, or upon such property, during that year, for the use of the state; and the county shall have a like lien thereon for the payment of the taxes which may be assessed against such owner, or upon such property, during that year, for the use of the county; and these liens shall exist as to all lands bid in by the state at tax sales for the annual taxes thereafter assessed on the value of the property so purchased, in the event of the tax title failing."

Chapter 314, Article 19, provides:

"8935. STATUTORY MODE OF ENFORCING NOT EXCLUSIVE. The statutory modes provided in this Code for the enforcement of liens are not the

exclusive modes of enforcing such liens; but are cumulative merely. Any lien may be enforced in the manner provided by statute, if so provided, or in equity, or by attachment for enforcing liens, or by any similar mode or remedy existing at common law."

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SUPREME COURT OF THE UNITED STATES.

No. 12, Original.—October Term, 1940.

The United States of America,
Plaintiff,
vs.
The State of Alabama.

[May 26, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The United States brought this suit to quiet its title to land in Macon County, Alabama. The complaint alleges that the State of Alabama is asserting liens as attaching to the land on October 1, 1936, for state and county taxes for the tax year 1937; and further that the State claims an interest in the land by reason of tax sales and the issue to the State of certificates of purchase. The Government asks a decree declaring the liens, tax sales and certificates of purchase to be invalid and enjoining the State from asserting its claims. The case was heard on bill and answer.

There are three tracts involved, which were conveyed by the owners to the United States on October 1, 1936, December 10, 1936, and March 10, 1937, respectively.

The applicable statute of Alabama[1] provides that "From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him . . . which lien shall continue until such taxes are paid". The county is to have a like lien for taxes assessed by it. These liens are made superior to all other liens and may be enforced by sale as provided in the Act.

[1] Section 377, Act No. 194, General Acts Alabama, 1935, p. 566, is as follows:

"From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the

Under the statute, the process of assessment for the tax year 1937 began on October 1, 1936. The grantors in the above mentioned conveyances, as the respective owners on that date, made their returns and in due course the tax assessor listed and valued the several tracts.[2] His valuations were certified as provided by the statute to the county board of review, which by virtue of its authority to fix valuations, made the definitive assessments.[3] It appears that the board of review met on March 8, 1937, and adjourned on March 20, 1937. It also appears that the rate for state taxes had been fixed by the statute,[4] and the rate for county taxes was set on February 8, 1937, under the authority given to the court of county commissioners.[5] The school district tax was approved by the electors of the school district at an election held on June 14, 1937. The taxes for the year 1937 became payable on October 1, 1937, and became delinquent on January 1, 1938.[6] Proceedings were then instituted in the county court for the sale of the lands, and under its decrees the sales took place on June 12, 1939. The lands were sold to the State and certificates of purchase were issued accordingly.

First.—The Government, invoking the principle that lands owned by the United States cannot be taxed by a State (*Van Brocklin* v. *Tennessee,* 117 U. S. 151) contends that the asserted

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limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

The State also cites Section 8874 of Article 6, Chapter 314, of the Code of Alabama, 1923, which provides:

"From and after the first day of October of each year, the state shall have a prior lien upon each and every piece or parcel of property, real or personal, for the payment of any and all taxes which may be assessed against the owner, or upon such property, during that year, for the use of the state; and the county shall have a like lien thereon for the payment of the taxes which may be assessed against such owner, or upon such property, during that year, for the use of the county; and these liens shall exist as to all lands bid in by the state at tax sales for the annual taxes thereafter assessed on the value of the property so purchased, in the event of the tax title failing".

[2] Act No. 194, General Acts Alabama, 1935, Sec. 29, p. 274.

[3] *Id.*, Secs. 50, 72, pp. 284, 292.

[4] *Id.*, Sec. 7, p. 263.

[5] *Id.*, Sec. 64, p. 288.

[6] *Id.*, Sec. 11, p. 267.

liens are without validity because at the time the tracts were acquired by the United States the amount of the taxes had not been ascertained, as the values had not then been assessed and the rates of taxation had not been fixed. Therefore it is said that the taxes had not then been imposed. The argument is that the Alabama tax statute does not "impose taxes" but "secures their payment" and that unless taxes are imposed the statute has no effect. The lien, it is urged, becomes "fixed and final" only when the taxes have been ascertained "by completion of levy and assessment".

There is no question however, as the Government concedes, that the state statute purports to impose a lien as of October 1, 1936, for the taxes which by the process of assessment were to become payable for the tax year 1937. October first is fixed as the tax day, and as of that day owners are to make their returns, values are to be fixed and the taxes laid. There is no question that the State thus undertakes to create an inchoate lien upon the lands as of the tax day, a lien which is to be effective for the amount of the taxes for the ensuing year as these are fixed by the defined statutory method. This lien by the state law is made effective not only as against the owners on the tax day but also as against subsequent mortgagees and purchasers. "It follows the land in the hands of the vendee, all persons being chargeable with a knowledge of its existence". *Driggers* v. *Cassaday*, 71 Ala. 529, 534. See, also, *Swann* v. *The State*, 77 Ala. 545; *State* v. *Alabama Educational Association*, 231 Ala. 11, 16. We find nothing in the Federal Constitution which invalidates such a statutory scheme. Subsequent lienors and purchasers have due notice of the tax liability imposed as of the tax day and of the process of assessment, and that liability, when its amount is definitely ascertained, relates back to the day specified. We recognized the validity of such a provision in *New York* v. *Maclay*, 288 U. S. 290, 292, where we observed that a tax lien created in a similar manner under a statute of New York "is effective for many purposes though its amount is undetermined. It is notice to mortgagees or purchasers, who are held to loan or purchase at their own risk if they take their mortgages or deeds before the tax has been assessed or paid". The precise decision in that case allowing priority to the United States

under R. S. 3466 for debts due by an insolvent corporation over claims of the State for franchise taxes due but not assessed or liquidated until after a receivership, in no way detracted from the recognition of the effectiveness of the state law creating a lien as against mortgagees and purchasers. As the court said, "Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers become chargeable with notice". *Id.*, p. 293. See also, *Osterberg* v. *Union Trust Co.*, 93 U. S. 424, 425, 428; *People* v. *Commissioners*, 104 U. S. 466, 468. Compare *Shotwell* v. *Moore*, 129 U. S. 590, 598. The lien in such a case, though inchoate on the day specified, and maturing when the extent of liability is ascertained by the statutory process, is similar in that respect, as the court said in the *Maclay* case, to the lien of a transfer tax or duty upon the estate of a decedent which is effective although the amount is ascertained after death.

Our present inquiry is whether, assuming the validity of the state statute creating a lien as of October 1, 1936, as against other subsequent purchasers, it should be deemed invalid as against the United States. The question is not whether such a lien could be enforced against the United States. The fact that the United States had taken title and that proceedings could not be taken against the United States without its consent would protect it against such enforcement. But that immunity would not be predicated upon the invalidity of the lien. If in this instance title had been taken by the United States in the summer of 1937 after the amount of the taxes had been ascertained and the respective liens were concededly valid, still proceedings against the United States could not be prosecuted without its consent.

The Government is not content with that measure of protection. The Government brings this suit in the view that it is entitled to have a marketable title and it seeks to remove the liens in question as clouds upon that title which would interfere with the disposition of the lands in the future. From that standpoint the Government asks a decree declaring the invalidity of the liens and enjoining the State from asserting any claim in the lands either adverse to the United States or to its successors in title. We think that the United States is not entitled to that relief. The United States took the conveyances with knowledge of the state law fixing the lien as

of October 1st. That law in creating such liens for the taxes subsequently assessed in due course and making them effective as against subsequent purchasers did not contravene the Constitution of the United States and we perceive no reason why the United States, albeit protected with respect to proceedings against it without its consent, should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyances on and after the specified tax date. It is familiar practice for grantees who take title in such circumstances to see that provision is made for the payment of taxes and the Government could easily have protected itself in like manner. Finding no constitutional infirmity in the state legislation, we think that the liens should be held valid.

We make no exception of the tract conveyed to the United States on the tax day, October 1, 1936, as we think the state statute, as contended by the State, is to be deemed effective from the moment the tax day began. See *Beck* v. *Johnson*, 235 Ala. 323, 324.

Second.—With respect to the tax sales the case has a different aspect. The proceedings in the county court for the sale of the lands were taken and the decrees were rendered after the United States had become the owner of the tracts. A proceeding against property in which the United States has an interest is a suit against the United States. *The Siren*, 7 Wall. 152, 154. The United States was an indispensable party to proceedings for the sale of the lands, and in the absence of its consent to the prosecution of such proceedings, the county court was without jurisdiction and its decrees, the tax sales and the certificates of purchase issued to the State were void. *Minnesota* v. *United States*, 305 U. S. 382, 386. While pleading to the contrary in its answer, the invalidity of the tax sales is now conceded by the State.

The United States is entitled to a decree setting aside the tax sales and the certificates of purchase, and in other respects the complaint is dismissed.

It is so ordered.

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